

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JESUS OLIVAS,

Plaintiff,

v.

Case No. 1:22-cv-00895-MIS-KBM

BERNALILLO COUNTY BOARD
OF COUNTY COMMISSIONERS,

Defendant.

ORDER DISMISSING CASE

THIS MATTER is before the Court on a sua sponte review of the record.

On October 12, 2022, Plaintiff Jesus Olivas filed a Complaint in New Mexico state court against the Bernalillo County Board of County Commissioners. ECF No. 1-1. Construed liberally, Plaintiff alleges that a staffing shortage at the Bernalillo County Metropolitan Detention Center (“BCMDC”)—where he was an inmate at the time he filed his Complaint—is violating his federal constitutional rights. See id. ¶¶ 5-10.

On November 22, 2022, Defendant filed a Notice of Removal in this Court, invoking the Court’s federal question jurisdiction, construing Plaintiff’s claims as arising under 42 U.S.C. § 1983. ECF No. 1 ¶¶ 5-6.

The same day, Defendant filed a Motion to Dismiss, arguing that the Complaint fails to state a claim under Section 1983 and Monell v. Department of Social Services of New York, 436 U.S. 658, 690 (1978). ECF No. 5. The Motion’s Certificate of Service reflects that Defendant

mailed a copy of the Motion to Defendant at BCMDC. Id. at 3. The Clerk of Court also mailed a copy of the Motion to Defendant at BCMDC.¹ To date, Plaintiff has not filed a response.

On August 8, 2023, United States Magistrate Judge Karen B. Molzen issued an Order to Show Cause noting that the BCMDC website shows that Plaintiff “is no longer in custody, but he has not provided a current address as required by D.N.M.LR-Civ. 83.6.” ECF No. 6 at 1. Judge Molzen provided Plaintiff thirty days to notify the clerk of his new address or show cause why this action should not be dismissed. Id. The Order states: “The failure to timely comply will result in dismissal without further notice.” Id. The Clerk of Court mailed a copy of the Order to Show Cause to Plaintiff at BCMDC—because it is still his address on file with the Court—but the Order was returned as undeliverable with “NOT IN CUSTODY” stamped on it. ECF No. 7. To date, Plaintiff has not responded to the Order to Show Cause, and has not updated his address with the Court. Indeed, he has taken no action in this case since it was removed to this Court.


Pursuant to the Local Rules of this District, a response to a motion “must be served and filed within fourteen (14) calendar days after service of the motion.” D.N.M.LR-Civ. 7.4(a). “The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M.LR-Civ. 7.1(b).

Here, Defendant filed its Motion to Dismiss on November 22, 2022. Pursuant to Local Rule 7.4(a), Plaintiff had until and including December 6, 2022, to file a response. To date, no response has been filed. Accordingly, it is **HEREBY ORDERED** that Defendant’s Motion to Dismiss, ECF No. 5, is **GRANTED** and the Complaint is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief can be granted. See United States v.

¹ The Motion was not returned to the Court as undeliverable.

\$10,990.00 in U.S. Currency, Case No. 18-CV-15-SWS/MLC, 2020 WL 1862972, at *3 (D.N.M. Feb. 27, 2020) (granting motion to dismiss pursuant to Local Rule 7.1(b) for party's failure to file a response) (citing Suazo v. Romero, CV 19-0228 WJ/JHR, 2019 WL 5268616, at *1 (D.N.M. Oct. 17, 2019)).

Alternatively, the Complaint is **DISMISSED WITHOUT PREJUDICE** for Plaintiff's failure to update his address with the Court or otherwise respond to Judge Molzen's Order to Show Cause. See Archuleta v. Colvin, No. CV 13-1215 LAM, 2014 WL 12600958, at *1 (D.N.M. July 23, 2014) (dismissing case for plaintiff's failure to respond to an order to show cause stating that failure to respond may result in dismissal); see also D.N.M.LR-Civ. 41.1 ("A civil action may be dismissed if, for a period of ninety (90) days, no steps are taken to move the case forward. The Clerk will give written notice that the action may be dismissed thirty (30) days after the date of the notice, unless good cause is shown.").



MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE